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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,156	11/06/2000	Vivian A. Schramm		8663

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/707,156	SCHRAMM ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14 and 21-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14 and 21-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The fact situation/chronology of this application is as follows. A Final Rejection was mailed on 6/9/05. On 9/26/05, applicant responded to the Final Rejection by filing an Appeal Brief to the Board of Appeals. The Appeal Brief was found to be non-compliant, and on 10/4/05, a Notification of Non-Compliant Appeal Brief was mailed by the USPTO. Shortly thereafter, new prior art came to the Examiner's attention which caused a further review of the record and further investigation on the part of the Examiner. The new prior art, and further evidence that has turned up, is deemed to be significantly material to the issue of patentability of the claims in this application. Accordingly, the Final Rejection mailed 6/9/05 is hereby rescinded and the following new grounds of rejection is placed in the record. Since the Final Rejection is withdrawn, the requirement for applicant to file a new compliant Brief set forth in the paper mailed 10/4/05 is also withdrawn since the Brief is moot in view of the new grounds of rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy

Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

The claims are also rejected using Product Alert (3/23/98) as the primary reference. That is, claims 1-14 and 21-35 are rejected under 35USC103(a) as being unpatentable over Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870), in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164).

In regard to the first rejection, employing Price as the primary reference, in regard to claim 1, Price discloses it was conventional to provide a container for inhibiting the spillage of contents of said container wherein the container defines an inner cavity and a funnel extending into said inner cavity to provide communication between said cavity and the exterior of said container, and wherein said container removably contains a flowable food substance. Hunter, Williams, Schramm, Martindale, Kennedy, Beutlich et al, McCombs, Meth, Patterson, Corteggiani, Pilot Ink and McCaffery are relied on as further evidence that it was notoriously old in the art to provide a container with a funnel to solve the problem of preventing spilling from the container of either liquids or solids, and either edibles or inedibles, that are contained within the container. This is precisely applicants problem as well. Note, for example, not only does Price teach a food in a

funnel containing container to prevent spilling of the food, but so does Williams. Claim 1 differs from Price in view of the art taken as a whole in the particular contents of the container. Claim 1 recites some type of flowable candy. As noted above, the art taken as a whole fairly teaches that a funnel associated with a container can prevent the spillage of any flowable product whether it is a solid or liquid, or edible or inedible. Product Alert (3/23/98) as further evidenced by The Product Alert (8/9/99, parts 1 and 2), the exhibits, Baker, Coleman and Hoeting et al all teach that not only are applicants obviously not the first to provide a container with flowable candy, but like any other flowable material, the flowable candy would inherently be subject to spilling. See in this regard, CandyWarehose and Hoeting et al. Note that, although the picture is admittedly of poor quality, there is no question that CandyWarehouse shows a container containing a flowable candy powder that is lying on its side with the powder emanating therefrom and a cover and hard candy attached thereto as described in Product Alert (3/23/98). To therefore modify Price in view of the art taken as a whole and substitute one conventional spillable, flowable material for another conventional spillable, flowable material, and one that is edible as well, is seen to have been obvious in view of the art taken as a whole. In regard to claim 3, as evidenced by the art taken as awhole, the funnel would inherently inhibit spillage when the container is oriented in any position. In regard to claim 4, the claim differs from Price in the recitation of a lollipop within the container. It is noted in this regard that applicant is not the first to associate a second dippable edible with a first edible that is contained within a funnel containing container as evidenced by Price, but applicants are also not the first to associate a lollipop with a

flowable candy in a container as evidenced by Product Alert (3/23/98) and the further evidentiary material. To modify the combination and add the appropriate second edible that is compatible with the first edible (in this case a lollipop with a flowable candy) for its art recognized and applicants intended function would therefore have been obvious. In regard to claim 5, Product Alert (3/23/98/) as further evidenced by the evidentiary material teaches the association of a lollipop to a holder that is sealingly engagable with the container is well established in the art and to modify the combination and provide the container with an engagable holder for its art recognized and applicants intended function would therefore have been obvious.

Claims 8-14 and 21-25 are rejected for the reasons given above.

In regard to the rejection employing Product Alert (3/23/98) as the primary reference, Product Alert as further evidenced by the evidentiary material teaches it is conventional in the art to provide a flowable candy in a container and that inherently a flowable material is subject to spilling from the container. Claim 1 differs from the combination in the provision of a funnel to inhibit spilling. As evidenced by Price and the other secondary art, it is notoriously old in the art to provide funnels for containers of all types; holding all types of flowable materials both solids and liquids, both edible and inedible, so that the funnels prevent spillage of the flowable contents. To modify Product Alert (3/23/98) and provide a funnel for its art recognized and applicants intended function, for a product known to be spillable, would have been unequivocally obvious.

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 1-9 of U.S. Patent No.

5,246,046 and claims 1-11 of RE 36131, in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

Claims 1-14 and 21-25 of the present application differ from the claims of 5,246,046 and Re 36,131 in the recitation that the funnel containing container holds a flowable candy. For the reasons fully and clearly detailed above, it would have been obvious in view of the art taken as a whole to modify the funnel containing containers of 5,246,046 and RE36,131 and employ flowable candy and a lollipop associated with a holder.

Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 1-29 of U.S. Patent No.6,386,138 in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm ('046), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870).

For the reasons fully and clearly detailed above, it would have been obvious in view of the art taken as a whole to modify the funnel containing container claims of 6,386,138 and substitute one conventional work piece for another conventional work piece wherein the container contents are subject to spilling.

Claims 1-4 and 21-25 are rejected under 35USC102(e)/103 in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm (6,386,138), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), in view of Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870) or Product Alert (3/23/98), as further evidenced by Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse (3/27/03), the various exhibits labeled A-H, Baker (WO 00/19803), Coleman ('884), and Hoeting et al ('870), in view of Price (3,840,678), as further evidenced by Hunter (GB ('356), Williams ('174) Schramm (6,386,138), Martindale ('797), Kennedy ('390), Beutlich et al (GB '581), McCombs ('714), Meth ('599), Patterson ('975), Corteggiani et al (FR'917), Pilot Ink (JP'388), and McCaffery ('164), for the reasons fully and clearly detailed above.

Claims 1-14 are rejected under 35USC112, first paragraph for the reasons given in the Office action mailed 6/9/05.

Thus, with the addition of Price, any urging that it was not known to employ a spill inhibiting funnel containing container with a flowable first edible product in the container,

and a second edible, which can be inserted through the funnel and into the first edible, so that the second edible could then be pulled out of the container with some of the first edible associated therewith and without spilling the first edible, is rendered moot. Similarly, with the addition of Product Alert (3/23/98), any urging that it was not known to associate a lollipop with a holder/container closure which fits onto a container containing a flowable candy is also rendered moot. In regard to Product Alert (3/23/98), this product, whether called Punker Pops or Muecas, or Powder Pop has been on sale in Mexico at least since 3/23/98. The various exhibits that are part of the rejection are supplied to further show the details of this product, which product has remained unchanged from the date of the article.

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
12/13/05